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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,427	03/16/2001	John Brassil	1509-152	4915

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EXAMINER

ORGAD, EDAN

ART UNIT PAPER NUMBER

2684

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/809,427

Applicant(s)

BRASSIL ET AL.

Examiner

Edan Orgad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 3/16/01.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-19 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-19 of copending Application No. 09/846,689. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Regarding claims 1-19 of the present application, they are identical to claims 1-19 presented in a preliminary amendment of application 09/846,689.

### *Specification*

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.

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- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the claim reads transferring data to or from the first communications device from or to EACH of said second communications device... it is unclear where there are more than one "second communication device" since the claim requires for a method of transferring data between a first and second communication device.

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Furthermore, it is not clear what comprises "a plurality of other similar communications devices.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 10-12, 18 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Cannon et al (US 6,650,871).

Regarding claims 1, 10 and 19, Cannon teaches a method of transferring data between a first communications device (300) and a second communications device, the second communications device (302) having a first transceiver for communication at a first data rate over a long range, and a second transceiver for communicating at a second, higher data rate over a short range (fig. 3), the method comprising the steps of forming a co-ordinated short-range network using the second communications device and a plurality of other similar communications devices, transferring a portion of said data to or from the first communications device from or to each of said second communications device and said other communications device using their first transceivers, and transferring said data portions between said other communications devices and the second communications device using their second transceivers (col. 6, lines 11-53).

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Regarding claims 2 and 11, Cannon teaches wherein each of the second communications device and said other communications devices is a mobile telecommunications device (element 302).

Regarding claims 3 and 12, Cannon teaches the second data rate is higher than the first data rate by a factor of two or more (col. 5, lines 3-12).

Regarding claims 9 and 18, Cannon teaches the second communications device transfers portions of data to be sent to the first communications device to each of a plurality of said other communications devices by means of its second transceiver and their second transceivers, the second communications device instructs said other communications devices to transmit said data portions to the first communications device, and the second communications device transmits the remaining portion of the data to the first communications device (col. 5, lines 15-25 & lines 44-55).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-7 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon et al (US 6,650,871).

Regarding claims 4 and 13, Cannon fails to specifically disclose each second transceiver operates in accordance with the wireless networking protocol IEEE802. However, official notice

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is taken that using networking protocol IEEE802 is notoriously well known. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use networking protocol IEEE802 with Cannon's invention in order to provide common used standards.

Regarding claims 5 and 14, Cannon fails to specifically disclose wherein the first transceiver of each of the second communications device and said other communications devices is such as to communicate with the base station of a cellular telecommunications network, and wherein the first communications device is also arranged to communicate with the base station. However, official notice is taken that it is very well known in the art to use mobile cordless handset that are cellular phones as well. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have Cannon's mobile handset communicate with the base station of a cellular telecommunications network, and wherein the first communications device is also arranged to communicate with the base station in order to provide an Advanced Mobile Phone Services, that divide a geographic region into sections while making the most use out of a limited number of transmission frequencies.

Regarding claims 6 and 15, Cannon teaches the first communications device includes a server which is arranged to instruct the base station to transfer respective data portions to each of said second communications device and said other communications devices (col. 6, lines 25-34).

Regarding claims 7 and 16, Cannon fails to specifically disclose the step of multiplexing said data portions at the second communications device. However, it is inherent to Cannon to have the step of multiplexing said data portions at the second communications device because A unit adapted to communicate according to the Bluetooth specification can only transmit and

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receive data in one piconet at a time, and therefore participation in multiple piconets is made on a time division multiplex basis.

*Allowable Subject Matter*

Claims 8 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims (claims 8 and 17 would be allowable if a terminal disclaimer is filed to overcome the double patenting rejection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims).

Regarding claims 8 and 17, Cannon and other prior art of record fail to specifically disclose the server requests a stream of data from a data provider in packets, and the server instructs the base station to route each data packet to a respective one of the second communications device and said other communications devices, the totality of the packets routed to a given second or other communications device constituting the data portion transferred to that communications device.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2002/0132632: High data rate communication.

US 2002/0098878: System and method for switching between audio sources.



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US 2002/0039907: Communique system for combined cellular and wireline communication networks.

US 6,026,297: Contemporaneous connectivity to multiple piconets.

US 5,890,069: Cordless telephone micro-cellular system.

US 2001/0029166: Intelligent piconet forming.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edan Orgad whose telephone number is 703-305-4223. The examiner can normally be reached on 8:00AM to 5:30PM with every other Friday off..

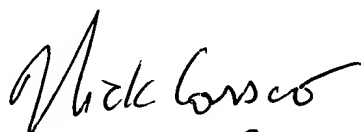
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 703-308-7745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Edan Orgad



Feb. 6<sup>th</sup>, 2004

  
Primary Examiner